

Article 3. Nuisances

§ 4-301 NUISANCES; PURPOSE. The city, by this Article defines its authority to define, regulate, suppress and prevent nuisances, and to declare what shall be a nuisance for its jurisdiction and to provide services to abate same for the health and sanitation of the city. (*Ref. §18-1720 R.S. Neb.*) (*Ord. No. 754, 2/16/09*)

§ 4-302 DEFINITIONS. The following definitions shall be applied throughout this Article. Where no definition is specified, the normal dictionary usage of the word shall apply.

(1) **NUISANCE: Defined.** A nuisance consists in doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing:

(a) Injures or endangers the comfort, repose, health, or safety or others;

(b) Offends decency;

(c) Is offensive to the senses;

(d) Unlawfully interferes with, obstructs, tends to obstruct, or renders dangerous for passage any stream, public parkway, square, street, or highway in the municipality;

(e) In any way renders other persons insecure in life or the use of property; or

(f) Essentially interferes with the comfortable enjoyment of life and property; or

(g) Tends to depreciate the value of the property of others.

(2) **NUISANCE** includes, but is not limited to, the maintaining, using, placing, depositing, leaving, or permitting any of the following specific acts, omissions, places, conditions, and things of:

(a) Any odorous, putrid, unsound, or unwholesome grain, meat, hides, skins, feathers, vegetable matter, or the whole or any part of any dead animal, fish, or fowl;

(b) The emission of smoke, dust, fumes, gases, mists, odors, or polluted air from any source that is injurious or dangerous to human health and safety;

(c) Privies, vaults, cesspools, dumps, pits, or like places which are not securely protected from flies or rats or other insects and rodents, or which are foul or malodorous;

(d) Filthy, littered, or trash-covered cellars, house yards, barnyards, stable-yards, factory-yards, mill yards, vacant areas in the rear of stores, granaries, vacant lots, houses, buildings, or premises;

(e) Dead animals or dead animals buried within the corporate limits;

(f) Animal manure in any quantity which is not securely protected from flies and the elements, or which is kept or handled in violation of any ordinance of the municipality;

(g) Hauling any garbage, waste or refuse matter through the streets, alleys, and public ways except when the same is loaded and conveyed in such a way where none of the contents shall be spilled;

(h) Liquid household waste, human excreta, garbage, butcher's trimmings and offal, pans of fish, or any waste vegetable or animal matter in any quantity. Nothing herein contained shall prevent the temporary retention of waste in receptacles nor the dumping of non-putrefying waste in a place and manner approved by the municipality;

(i) Tin cans, bottles, glass, cans, ashes, small pieces of scrap iron, wire metal articles, bric-a-brac, broken stone or cement, broken crockery, broken glass, broken plaster and all trash or abandoned material, unless the same be kept in covered bins or galvanized iron receptacles;

(j) Trash, litter, rags, accumulations of barrels, boxes, crates, packing crates, mattresses, bedding, excelsior, packing hay, straw or other packing material, lumber not neatly piled, scrap iron, tin or other metal not neatly piled, old automobiles or parts thereof, or any other waste materials when any of the articles or materials create a condition in which flies or rats or other insects or rodents may breed

or multiply, or which may be a fire danger, or which are so unsightly as to depreciate property values in the vicinity;

(k) Any unsafe building, unsightly building, billboard, or other structure, or any old abandoned or partially destroyed building or structure or any building or structure commenced and left unfinished, which buildings, billboards, or other structures are a fire hazard, or a menace to the public health or safety, or are so unsightly as to depreciate the value of property in the vicinity;

(l) All places used or maintained as junk yards, or dumping grounds, or for the wrecking and dissembling of automobiles, trucks, tractors, or machinery of any kind, or for the storing or leaving of worn-out, wrecked or abandoned automobiles, trucks, tractors, or machinery of any kind, or of any of the parts thereof, or for the storing or leaving of any machinery or equipment used by contractors or builders or by other persons, which places are kept or maintained so as to essentially interfere with the comfortable enjoyment of life or property by others, or which are so unsightly as to tend to depreciate property values in the vicinity thereof;

(m) Stockyards, granaries, mills, pig pens, cattle pens, chicken pens or any other place, building or enclosure, in which animals or fowls of any kind are confined or on which are stored tankage or any other animal or vegetable matter, or on which any animal or vegetable matter including grain is being processed, when the places in which the animals are confined, or the premises on which the vegetable or animal matter is located are maintained and kept in such a manner that foul and noxious odors are permitted to emanate therefrom to the annoyance of inhabitants of the municipality or are maintained and kept in such a manner as to be injurious to the public health;

(n) Dead or diseased trees within the right-of-way of streets within the corporate limits of the city, or on private property within the one mile zoning jurisdiction beyond the corporate limits (*Ref. §17-555 RS Neb.*);

(o) Undrained lots which hold or may hold stagnant water or any other nuisance;

(p) Any condition which allows the perpetuating of insects and rodents;

(q) Storage, accumulation, keeping, placing, or allowing to remain, trash, garbage, scrap and wrecked, worn-out, broken or inoperative, or partially destroyed or disassembled personal or real property of any kind, including any junk or abandoned motor vehicles, tractors, trailers, machinery and equipment.

(r) Any vehicle which is not properly registered, or is inoperable, wrecked, junked, or partially dismantled and remaining longer than thirty (30) days on private property. This does not apply to a vehicle in an enclosed building, a vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the lawful operation of such business enterprise (such as a licensed salvage dealer, motor vehicle dealer or farm implement dealer), or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner, and so long as the premises which said vehicle is located is not a nuisance and is maintained in a healthful and safe condition;

(s) Lots, pieces of ground, and the adjoining streets and alleys with growth of weeds or noxious growth;

(t) All other things specifically designated as nuisances elsewhere in the City Code. (*Ref. §18-1723 R.S. Neb.*) (*Ord. No. 754, 2/16/09*)

§ 4-303 ABATEMENT SERVICES AND NOTICE PROCEDURE FOR NUISANCES. (1) Nuisance Officer. The city shall appoint an individual or organization to identify and enforce abatement of nuisances within the city. Said individual or organization shall be identified as the "Nuisance Officer" and said appointment shall be identified by resolution of the city.

(2) Identifying nuisances.

(a) The city may identify suspected nuisances, in which case the City Clerk shall, upon direction of the City Council, notify

the Nuisance Officer of the suspected location, person or persons in violation of any provision of this chapter and provide the address of such alleged nuisance.

(b) The city may request that the Nuisance Officer audit the city for nuisances in the City as defined by the City Code. The Nuisance Officer shall then view the property or area for any violations of the nuisance of the city. Nuisance Officer shall not go upon private property for said audit unless granted permission by the resident/owner of suspected property.

(3) Confirming, documenting and presenting nuisances. The Nuisance Officer shall identify and confirm that in his or her opinion a nuisance exists as defined by Federal, State or City law.

(a) Upon confirming that a nuisance appears to exist, the Nuisance Officer shall document said nuisance with photographs and other evidence pertinent to the situation. The Nuisance Officer shall then present this information to the city governing board at a regular or special meeting for its confirmation that a nuisance exists as stated in § 4-304. (*Ord. No. 754, 2/16/09*)

§ 4-304 ENFORCEMENT. (1) Enforcement procedures. If the nuisance, health and/or sanitation violation is brought to the Governing Body by the City Nuisance Officer, or the Board of Health or upon the Governing Body's own action, the Governing Body then may declare by resolution a nuisance, health and/or sanitation violation. The nuisance, health and/or sanitation ordinances may be enforced by:

(a) City administrative procedures;
(b) Penal prosecutions through the courts, and/or;
(c) By civil procedures in the courts. Any of these procedures, or any combination of these procedures may be used to enforce the nuisance, health and/or sanitation ordinances of the city.

(2) Administrative procedure. The city may proceed with abatement of the nuisance, sanitation and/or health violation with or without Court involvement after the following procedure is followed:

(a) After a nuisance is declared, the City Clerk notifies the Nuisance Officer to serve notice upon the violator(s).

(b) The Nuisance Officer shall prepare and serve notice, which shall describe the found nuisance, and state the required date of abatement and when removal of the nuisance shall be accomplished. The notice shall also provide information as to how the interested parties may request a hearing before the Governing Body described in paragraph (d) herein.

(c) The notice shall be given to each owner or owner's duly authorized agent and to the occupant, if any, by personal service or certified mail. If notice by personal service or certified mail is unsuccessful, said notice shall be given by a single publication in a newspaper of general circulation in the city or county in which the city is located, and by conspicuously posting the notice on the lot or ground upon which the nuisance is to be abated and removed. The date of service is determined by the later of certified mail receipt, personal service or publication date.

(d) The accused violator (owner/agent/occupant) may request in writing a hearing before the Governing Body of the City within five (5) days after notice of violation is served or published. For tree nuisance violations, the period for requesting a hearing is extended to thirty (30) days after service.

(e) If no request for a hearing is received in the required time period, the Governing Body may cause a hearing to be held this option is at the sole discretion of the Governing Body to be used in exceptional cases.

(f) If a hearing is requested, the City Clerk shall fix date of said hearing to be no later than fifteen (15) days from receipt of the request for the hearing. Notice of said hearing and with the date and time shall be served upon the agent, owner and occupant of the nuisance property by certified and regular mail.

(g) The Hearing shall be a "show cause" hearing in which the agent, owner, or occupant of the nuisance property (objecting property) shall provide evidence why the alleged condition should not

be found to be a public nuisance and remedied. This hearing shall be heard before a quorum of the governing body. The presiding official of the Governing Body may conduct the hearing or said presiding official may appoint another person as the hearing officer to conduct the hearing (said hearing officer may be the City Attorney or the Enforcement Officer.) At the hearing the hearing officer shall mark and receive evidence which was presented when the finding of a nuisance was made, relevant evidence of the nuisance since that time, and evidence that the notices were properly given. The objecting party shall then provide its evidence. The rules of evidence are not required at said hearing, but all evidence must be relevant to the particular nuisance being heard. Testimony shall be under oath as administered by the hearing officer or any person so designated by the hearing officer, and the person providing the testimony is subject to the laws of perjury. Evidence may be submitted in writing by affidavit.

(h) No later than fourteen (14) days after the hearing and consideration of the evidence, the Governing Board may by majority vote rescind the resolution of violation. If the resolution of violation is not rescinded, it shall stand. Furthermore, if the objector or its designated agent fails to appear at the hearing or does not provide evidence, the nuisance shall stand. If the resolution is not rescinded, the Governing Board may, by resolution, extend the date that owner, occupant, lessee or mortgagee shall abate and remedy the said public nuisance, but in no case shall this time exceed sixty (60) days. The findings of the governing Board shall be made no later than fourteen (14) days after the hearing and notice of its finding shall be served upon the objecting party by regular US Mail within five (5) days of the finding. The finding of this hearing is final, provided that an interested party or parties may appeal such decision to the appropriate court for adjudication.

(i) If the Nuisance Officer determines the nuisance is not remedied and abated within the time period designated, the city shall cause the abatement of the nuisance.

(j) If an interested party properly appeals to an appropriate Court, the findings and orders of the city, the city's actions shall be stayed during and until such time that the legal proceedings are completed or dismissed. In cases of appeal from an action of the city condemning real property as a nuisance or as dangerous under the policy powers of the municipality, the owners of the adjoining property may intervene in the action at any time before trial. (*Ref. 19-710 R.S. Neb.*)

(2) Penal court enforcement procedure. If the declared nuisance, health and/or sanitation violation is not abated within fifteen (15) days that the notice is served upon the owner and/or occupant, and the City Clerk has not received a request for hearing, the nuisance officer may cause issue of a citation for the code violation.

(a) The citation shall be prosecuted to the appropriate Court by the City Attorney or other designated prosecutor for the city.

(b) A person or persons found guilty of these violations shall be guilty of a misdemeanor and fined up to five hundred dollars (\$500) per each offense.

(c) Each day that the nuisance as identified in the nuisance resolution and notice is not abated shall be a separate offense and subject to a separate fine.

(3) Civil court procedure. The Governing Board may instruct, by resolution, the City Attorney to file a civil action for the abatement of a nuisance. Said civil suit may commence after fifteen (15) days from the time the notice has been served as stated in Article 2 of this Chapter, and may be filed and prosecuted at the same time any other enforcement procedure has commenced, terminated or is in progress. (*Ord. No. 754, 2/16/09*)

§ 4-305 EXPENSES. (1) When the city has effected the abatement of the nuisance, health and/or sanitation violation through either city employees or through contract with a third party and has incurred expenses and costs thereof, the actual cost thereof shall be charged to the owner, agent, occupant or person in possession, charge or control

of such property. The billing shall be calculated at the actual cost of abating the nuisance plus a twenty-five-dollar (\$25.00) administrative fee.

(2) This billing shall be submitted to the last known address of the owner of the nuisance property as found in the County Treasurer's office by regular U.S. Mail.

(3) If said costs are not paid within two months after the work is done and one month after the expenses and costs are submitted to the owner and/or occupant, the city may levy and assess the expenses and costs upon the real estate benefitted by the actions in the same manner as other special assessments are levied and assessed, and the city may collect said assessments in the same procedure as other special assessments are collected. The city may also recover said expenses and costs of abating the nuisance, health and/or sanitation violations(s) in a civil action in the courts of the appropriate county in Nebraska. (*Ord. No. 754, 2/16/09*)

Benkelman Code